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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,781	07/10/2003	Luca Rampoldi	240058US0	1487
22850	7590	04/06/2006	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			GEORGE, KONATA M	
		ART UNIT	PAPER NUMBER	
		1616		
DATE MAILED: 04/06/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/615,781	RAMPOLDI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Konata M. George	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

Claims 9-23 are pending in this application.

### ***Action Summary***

1. Examiner acknowledges the cancellation of claims 1-8. Therefore, any and all rejections and/or objections are hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shastri et al. (US 2003/0078215 A1) in view of RxList Monographs (2002).

Shastri et al. discloses a composition comprising a bioactive agent and a complexing agent (abstract). Paragraphs [0020-0022] teach the bioactive agents are antibiotics and that fosfomycin can be used. Paragraph [0082] teaches the composition can be used for oral administration in the form of granules and that excipients such as sodium bicarbonate can be employed in the formulation. The prior art does not teach administering the composition in a single dose of 5.631 g or the molar ratio of the substance with respect to the fosfomycin.

RxList Monographs disclose a composition for fosfomycin in the form of granules consisting of 5.631 g of fosfomycin.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of RxList Monographs that 5.631 g of fosfomycin is the industry standard dosage amount for fosfomycin. With respect to the claimed molar ratios, absent a clear showing of criticality, the determination of particular molar ratio is within the skill of the ordinary worker as part of the process of normal optimization to achieve the desired results of the claimed composition.

***Response to Arguments***

3. Applicant's arguments filed November 17, 2005 have been fully considered but they are not persuasive.

Applicants amended the claims to recite that the fosfomycin contains a tromethamol salt and thus is not taught by the prior art. It is the position of the examiner that the bioactive agents of the prior art as recited are directed towards the broad disclosure of the active agent. One of ordinary skill in the art of drug preparation would have the understanding of preparing that active agent with a salt, if the salt of the drug would better suit the preparation.

***Conclusion***

4. Claims 9-23 are pending.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephone Inquiries***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is (571) 272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8000 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Konata M. George



JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600